



**STATE OF MICHIGAN  
17TH JUDICIAL CIRCUIT COURT**

**PAUL J. SULLIVAN  
CHIEF JUDGE**

**SUITE 10500 C  
180 OTTAWA AVENUE NW  
GRAND RAPIDS, MICHIGAN 49503-2751**

June 27, 2008

The Honorable Clifford W. Taylor  
Michigan Supreme Court  
Post Office Box 30052  
Lansing, Michigan 48909

Re: *ADM File No. 2006-16*

Dear Chief Justice Taylor:

As the judges of the Criminal/Civil Division of the Kent County Circuit Court, we are writing to set forth an objection to one proposal contained in ADM File No. 2006-16. Our bench objects to the proposed version of MCR 6.302(C)(1) directing courts not to "participate in discussions between the prosecutor and the defendant's lawyer or the defendant . . . concerning a plea agreement." We recognize that the proposed amendment "would make the rules consistent with the federal rules, which preclude judicial involvement in negotiating plea agreements," see Staff Comment, but we believe that the substantial difference in caseloads between our court and the federal courts makes conformity with federal practice in this area undesirable.

On a regular basis, the judges of our court conduct status conferences in criminal cases for the purpose of resolving as many cases as possible before trial. Some of us take part in these status conferences, and we have found that our participation often makes the difference in achieving a resolution without the necessity for a trial. These status conferences are court-mandated events, and they have the effect of requiring the parties to appear and give serious attention to resolving their cases. But at these status conferences, not one of us exerts pressure designed to force a resolution. Instead, we simply provide general guidance to the parties about how we may view the case at the sentencing hearing, while reserving the right to impose a fair sentence after a thorough review of the pre-sentence report. Thus, the members of our court neither make nor extract any hard promises during status conferences. We simply offer general comments and facilitate negotiations between the parties.

The proposed amendment to MCR 6.302(C)(1) would prohibit us from taking part in status conferences, and thereby deprive us of the opportunity to ensure that the parties seriously attempt to resolve their cases. Given the volume of our criminal caseloads, which are more substantial than the caseloads of United States District Judges, we believe that we should have every tool at our disposal in attempting to resolve criminal cases. Federal courts have the time and the resources necessary to try more criminal cases than federal judges could resolve by taking part in plea

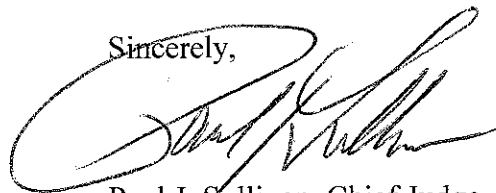
negotiations. We cannot stretch our budgets and our dockets to try cases that could be resolved with judicial involvement in the plea-negotiation process. In our circuit, we dispose of approximately 97 percent of our criminal cases within the timeline prescribed by the Michigan Supreme Court. Each circuit judge currently handles 500 to 600 criminal cases per year, as well as approximately 300 civil cases annually. If we cannot conduct status conferences in criminal cases, we have serious concerns that our rate of compliance with the timing guidelines will drop significantly.

Our bench includes both former county Assistant Prosecuting Attorneys and former Assistant United States Attorneys. Those of us who have prosecuted in federal court have enjoyed the luxury of manageable caseloads, which afford the opportunity to engage in painstaking negotiations over extensive written plea agreements. The practice in state court, as our judges have observed as both advocates and jurists, is much more fast-paced. Attorneys often attend status conferences without giving much prior attention to the criminal case files. Therefore, the status conferences we conduct are sessions where the judges and the attorneys for both sides exchange information in a focused endeavor to reach a common understanding about criminal cases. Criminal cases are resolved in short bursts of intense activity, rather than through protracted negotiations. The involvement of our judges during these moments of intense activity often proves to be a crucial element in resolving cases in short order.

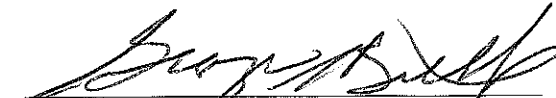
We have no objection to any other portion of the proposed amendments to MCR 6.302 and MCR 6.310 set forth in ADM File No. 2006-16. Indeed, we welcome many of the proposed changes, and we even support the amendment that would eliminate pleas under People v Cobbs, 443 Mich 276 (1993). We are concerned, however, that preclusion of judicial involvement in plea negotiations will make it much more difficult to resolve criminal cases in our county. As a result, we object to the proposed version of MCR 6.302(C)(1).

We thank the Michigan Supreme Court for the opportunity to comment on the proposed rule changes in ADM File No. 2006-16.

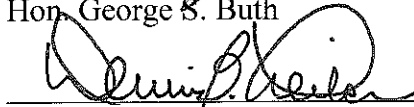
Sincerely,



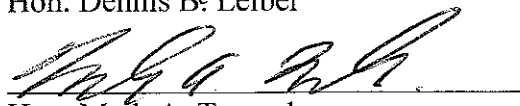
Paul J. Sullivan, Chief Judge  
Kent County Circuit Court



Hon. George S. Buth



Hon. Dennis B. Leiber



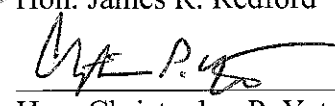
Hon. Mark A. Trusock



Hon. Donald A. Johnston



Hon. James R. Redford



Hon. Christopher P. Yates